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OFFICE OF PETITIONS

In re Application of
Choi, et al.
Application No. 09/888,114
Filed: June 22, 2001
Attorney Docket No. IMMR032/03US

DECISION ON PETITION

This is a decision on the renewed petition under 37 CFR 1.78(a), filed July 19, 2005, which is being treated as a petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. 120 and 365(c) for the benefit of nonprovisional applications 09/829,405 and 09/598,089, and international application PCT/US01/19625, and to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e) for the benefit of provisional application 60/283,976.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application(s), unless previously submitted;¹

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application was filed on June 22, 2001, and was pending at the time of filing of the instant petition. Reference to the prior filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii) and 37 CFR 1.78(a)(5)(iii).

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6), the petition is granted.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, and the foreign priority claim, accompanies this decision on petition.

Receipt of the \$1,300 petition fee, submitted with the petition filed September 2, 2003, is acknowledged.

The granting of the petition to accept the delayed benefit claim

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

to the prior-filed application(s) under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. §§ 119(e) and 120 and 37 CFR 1.78 must be met. Accordingly, the examiner will, in due course, consider this benefit claims and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Group Art Unit 1648 for examination.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Cliff Congo at (571)272-3207.



Frances Hicks
Petitions Examiner
Office of Petitions

Enc: Corrected Filing Receipt (3 pages)